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Has the EPA overstepped its bounds with Pebble Project assessment?

Can the EPA legally issue a lengthy report detailing potential negative impacts of the Pebble copper-gold project on Alaska's Bristol Bay before the Pebble Partnership submits permitting requests?

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RENO, NV -

In issuing a watershed assessment outlining potential Pebble mine risks to fisheries, wildlife and wetlands in the Bristol Bay region of southwestern Alaska-before the Pebble Partnership has even applied for project permits--did the U.S. EPA overstep its authority?

Although the EPA issued a hefty three-volume report on the possible impact of mining projects on the Bristol Bay watershed system, the agency insisted, "The draft study in no way prejudges future consideration of proposed mining activities."

EPA Pacific Region director Dennis McLerran called a press conference to discuss his reasoning for issuing the report. However, *Mineweb* was not notified about the release of the report or the EPA's press conference.

News media who were invited to participant in the conference call quoted McLerran as stressing the EPA is far from making any decision to stop development of the mine. "This document itself will inform future decisions, but we're not ready or at or at the point to make any of the future decisions yet."

However, the EPA is apparently at the point where it is more than willing to stir up the murky waters of public opinion in an effort to campaign for the agency's role as the primary Clean Water permitting authority for the Pebble Project. On May 15, 2012, Pebble Partnership member Northern Dynasty issued a news release announcing the Pebble Partnership is ready to begin its permitting process under the National Environmental Policy Act toward the end of the year.

By the end of the week, the EPA assessment of Bristol Bay was made public, along with news releases from environmental groups voicing their support for the EPA's "comprehensive, scientific assessment of Bristol Bay." Never mind that the U.S. Corps of Engineers has been the primary permitting authority for dredging and filling permits for mining projects impacting watersheds. Over the opposition of the Alaska attorney general, Ranking Senate Energy & Resources Committee Member Lisa Murkowski, R-Alaska, and others, the EPA is determined to wrest the permitting authority for itself, using the power it believes was granted by the Clean Water Act.

On Friday, Murkowski issued a statement declaring, "I have been consistently clear about two things concerning the pebble project: I will not trade fish for gold, but I oppose a preemptive veto prior to proper evaluation of an application and actual project description. I want to see the NEPA process work as it is supposed to."

"While I am pleased this draft assessment does not contain a pre-emptive veto, I'm concerned that it does not make clear the appropriate time for [Clean Water Act] Section 404 evaluation and action is only in response to an application for permit," she observed. "I do not believe a preemptive veto is within the agency's statutory authorities and I have made it clear."

"While the agency has offered assistance that its assessment of the potential impact of a large-scale mining operation on the watershed should not be opposed to future development activities in the region, they failed to provide a written legal opinion to support their argument," Murkowski noted.

In her letter to Murkowski, EPA Administrator Lisa P. Jackson responded, "While your question is hypothetical, and the EPA has no plans to use 404(c) authority unless justified by the full technical assessment, let me also assure you that we have a broad range of discretion in our use of the 404(c) authority. A final 404(c) action in Bristol Bay prohibiting or restricting large scale mining activities would not affect other development in the watershed."

Jackson stressed that she does not expect the EPA's Bristol Bay watershed assessment "to play a significant role should controversy arise about possible regulation of development activities unrelated to large-scale mining."

News media reports say Rep. Darrell Issa, R-California, chairman of the House Committee on Oversight and Government Reform, has questioned the EPA's authority to regulate the Pebble Project and demanded the documents, sources and communications the agency used in preparing its watershed assessment.

More than 500 hunting and angling groups across the country sent a letter to EPA Administrator Jackson asking the agency "to proactively fulfill its mission to protect the environment and human health in Bristol Bay, AK by using its authority under Clean Water Act Section 404(c) to withdraw waters and wetlands in the headwaters of the Bristol Bay watershed from future specification as disposal sites for dredge and fill activity associated with mining operations."

In a news release issued Friday, Trout Unlimited Alaska and Sportsmen for Bristol Bay proclaimed, "Sportsmen are united in their support for the EPA to use its power under the Clean Water Act's section 404(c) to protect Bristol Bay from the proposed Pebble Mine, which, if permitted, would become North American's largest open-pit mine and production up to 10 billion tons of toxic mine waste that must be treated and stored in perpetuity."

"The EPA is taking the right steps with its comprehensive assessment of Bristol Bay," said Gordon Robertson, vice president of the American Sportsfishing Association. "This deliberate and careful action will lead to an objective decision that conserves the fishery and the related resources of the Bristol Bay region."

EPA BRISTOL BAY WATERSHED ASSESSMENT

The geographic scope of the assessment is the Nushagak River and Kvichak River watersheds, the largest of Bristol Bay watershed's six major river basins. The two watersheds are identified as mineral development areas by the State of Alaska. The Pebble deposit is located at the intersection of the two watersheds.

The Bristol Bay watershed provides habitat for 35 species of fishes, more than 190 bird species and more than 40 terrestrial mammal species. "Chief among these resources is a world-class commercial and sport fishery for Pacific salmon and other important resident fishes," says EPA. The Bristol Bay watershed supports the largest sockeye salmon fishery in the world with an average annual commercial fishery harvest of 37.5 million between 1990 and 2010.

The watershed also supports brown bears, bald eagles, gray wolves, moose, caribou, and numerous waterfowl species.

The EPA observed that 14 of Bristol Bay's 25 Alaska Native villages and communities are within these watersheds with a total population of 4,337 persons in 2010. Salmon comprise 52% of their diets, while fish, moose and other wildlife accounts for an average of 80% of the protein consumed by area residents.

The Bristol Bay commercial salmon fishery generates the largest component of activity in the Bristol Bay watershed, valued at \$300 million wholesale value in 2009, and employing 11,500 workers. Bristol Bay spot fishing generates \$60 million per years and employs 850 workers.

Meanwhile, the potential for large-scale mining development within the region is greatest for copper deposits, and, a lesser extent, gold deposits, says EPA. Pebble could produce more than 11 billion metric tons of ore, the agency estimated in the assessment.

If no major failure occurs in Pebble operations, the EPA still worries negative impacts on fish resulting from habitat loss and modification within and beyond the area of mining activities could eliminate or block streams, reduce streamflow, remote from 2,512 to 4,286 acres of wetlands, reduce the quality of downstream habitat, reduce good food resources, increase summer water temperature and decrease winter water temperature, and inhibit salmon movement at road crossings.

Potential mining operation failures discussed in the assessment including tailings dam rupture, failure of the concentrate pipeline, water collection and treatment failures, and road and culvert failures.

The assessment also discussed impacts of the overall loss of wetlands, and fishery risks impacting wildlife and indigenous culture.

PEBBLE PARTNERSHIP RESPONSE

Pebble Partnership President John Shively said, "We believe that EPA has rushed its assessment process, and this is especially problematic in light of the large size of the study area."

"Furthermore, we are concerned that the EPA may have used this rushed process as the basis for an unprecedented regulatory action against the Pebble Project," Shively advised. "Until we complete our work and submit an application under NEPA, the EPA's work as it relates to our project is based entirely on speculation."

"The Pebble deposit is located on State of Alaska lands that are open to mineral exploration and development," he observed. "As such, the State has expressed strong objection about the entire process the EPA is undertaking at this area." Shively warned federal intrusion such as the EPA watershed assessment "could have a chilling effect on future resource development investments in Alaska."

The Pebble Partnership asserts the assessment is "fundamentally flawed" because EPA has undertaken to study in one year a 20,000 square mile area about the size of Maryland and New Jersey combined.; and is attempting to assess the effects of a project that has not yet been finalized or undergone the permitting process."

Finally, the partnership claims the report "relies on a hypothetical mining project with hypothetical environmental impacts;...reflect an unprecedented narrow focus on a single mining project and single policy option; and improperly adds economic analysis, and then in a biased fashion."

"The investment uncertainties created by the EPA's short-sighted actions have the potential to inhibit development projects not only throughout Alaska, but nationwide," the partnership warned.

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